



May 1, 1985

In the Matter of

COURTLAND BARNEY,
CHARLES BECK, ROBERT
PETERSON, GRANT PRATT

Case No. 85-TLC-5

DECISION AND ORDER GRANTING CERTIFICATION

This proceeding concerns temporary labor certification, which is authorized by 8 U.S.C. §1101, *et seq.*, and is regulated by 20 C.F.R. 200 *et seq.* Upon application for temporary labor certification for aliens, the Department of Labor must ascertain whether there are any available U.S. workers to fill the position proposed to be offered to aliens, and whether the employment of aliens will adversely affect the wages and working conditions of similarly employed U.S. workers. 8 C.F.R. §214.2

The proceeding was initiated by the above-named Employers on denial of their applications for temporary labor certification by the Regional Administrator, Employment and Training Administration. (RA) The applications were denied because the Employers' reports of recruitment efforts were not in the Office of the RA by April 18, 1985. (GP 17, Beck 17, RP 17, CB 28)¹

The regulations provide that an application should be filed 80 days prior to the date of need, that there be 60 days of recruitment of U.S. workers, and that the RA should make a decision on whether the recruitment assurances are satisfied by the 60th day of recruitment or 20 days prior to the date of need, whichever is later. 20 C.F.R. §655.200(a), §655.205(c)

In this case, the Employers, along with some 29 other Montana ranchers, formed the Southwest Montana Agriculture Association to facilitate the hiring of temporary alien workers, and filed applications for certification on February 15, 1985. (GP 9-10, Beck 9-10, RP 9-10, CB 9-10) By a letter dated March 15, 1985, the RA notified the Employers that the applications were timely; that they were acceptable, provided enclosed amendments were signed and returned: that specified recruitment procedures must be followed, and; reports of recruitment efforts should be

¹ In this Decision, AF will indicate the general appeal file; GP will indicate Grant Pratt's file; Beck will indicate Charlie Beck's file; RP will indicate Robert Peterson's file; and CB will indicate Courtland Barney's file.

returned by April 10, 1985. (AP 29-34) According to the letters denying certification, an extension until April 18 to submit domestic recruitment reports was requested and granted. Reports from the Employers in this action were mailed prior to April 18. Two were mailed April 13, one was mailed April 15; and one was mailed April 16. (AP 17) The reports did not reach the RA's office by April 18, however, and labor certification was denied to these four.

I find that the RA's requirement that the reports be in his office by a date which gives him time to make a determination 20 days prior to the date of need is within the parameters of the regulations.

I also find that, though the RA was rigid in his application of the time periods in the regulations, he did not abuse his discretion. The regulations allow the RA to waive time requirements in emergency situations for good cause shown. 20 C.F.R. §655.201(c). An extension of time until April 18 for receipt of reports was requested and granted. There is no indication that additional time beyond April 18 was requested. It was therefore within the RA's authority to make a determination on that date.

I will not, however, give deference to form over substance. It is apparent that the Employers have complied with the application procedures and the recruitment requirements. The policies of the Department of Labor, to assure that U.S. workers are not available and that similarly situated U.S. workers are not adversely affected, have been observed. Justice is best served in this case by a reversal of the denial of labor certification.

ORDER

It is hereby ORDERED that temporary labor certification be granted.

DAVID A. CLARKE, JR.
Administrative Law Judge

DAC/JL/gaf